IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 752 of 2000
in
SPECIAL CIVIL APPLICATION No 4644 of 1999
and
CIVIL APPLICATION NO. 10421 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DESAI VIRAMBHAI AJAMLBHAI
Versus
REGISTRAR

Appearance:

MR UNWALLA for MR PK JANI for Appellant.
MR PARESH UPADHYAY for High Court of Gujarat.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 02/08/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

The draft amendment as prayed for is granted.

This Letters Patent Appeal is directed against the order dated 25th Jan.2000 passed by the learned Single Judge whereby the petition was dismissed in limine.

The appellant has been working as a Part Time Sweeper on the establishment of the District Court, Mehsana. While he was working as such, applications were invited for appointment to Class-IV posts and after the interviews, the select list was prepared in which the appellant's name was not there. It is not the grievance of the appellant that his candidature had not been considered. After considering the candidature of all the candidates who had applied in response to the notice inviting applications, if in the process of direct recruitment, the appellant has not been selected, he cannot challenge the selection on the ground that any other persons who were also working as Part Time Sweeper for a period shorter than him have been selected while his name has not been included in the select list. The length of working as Part Time Sweeper and such seniority has no relevance so far as the direct recruitment is concerned. We therefore, agree with the reasons which have been given by the learned Single Judge while dismissing the petition in limine.

However, we noticed that on 14th March 2001, the Division Bench had permitted the appellant to make a representation before the High Court. Pursuant to the Division Bench's order dated 14th March 2001, the appellant submitted a representation. We had, therefore, called upon learned Counsel Mr.Paresh Upadhyay appearing for the High Court to produce before us the file in which the representation was dealt with. Mr.Paresh Upadhyay has produced before us the papers in which the representation of the appellant has been dealt with and we find that the representation has been dealt with in detail after obtaining parawise comments from the District Judge, Mehsana. It is clear from these papers that the representation of the appellant has been considered in detail but the same has not been accepted for valid reasons which have been taken into consideration. We also noticed from the papers produced by Mr.Paresh Upadhyay that the District Judge, Mehsana

has made a proposal to the High Court for absorption and regularisation of all Part Time Sweepers of Mehsana District on the post of Peon/Waterman/Watchman (Class-IV) by preparing a select list and the same is under active consideration of the High Court on administrative side. In case and as and when such decision is taken by the High Court, the appellant may also get the benefit of such decision in case he is found entitled for the same on his turn.

It is not as if the appellant is wholly out of employment. He is continuing as a Part Time Sweeper on the establishment of the District Court, Mehsana and he is being paid a sum of Rs.1350/- per month as has been pointed out by learned Counsel for the appellant himself. We do not find any merit in this Letters Patent Appeal and the same is hereby dismissed, with no order as to costs.

Whereas the main appeal itself has been dismissed, there is no question of any interim order in the Civil Application No.10421 of 2000. The Civil Application stands rejected accordingly.

2nd Aug.2001 (M.R. Calla, J.)

(N.G. Nandi, J.)

Sreeram.